

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

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SPECIAL CIVIL APPLICATION No 1478 of 1997

And

SPECIAL CIVIL APPLICATION No 3028 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

KALYANBHAI BALUBHAI TAVERIA

Versus

GSRTC

Appearance:

Special Civil Application No. 1478 of 1997

And

Special Civil Application No 3028 of 1997

Mr.H.K. Rathod for the workman Kalyanbhai
Balubhai Taveria.

Ms.Vasavdatta Bhatt for the Gujarat State Road
Transport Corporation, Surat.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/07/97

COMMON ORAL JUDGEMENT

1. Both these Special Civil Applications are directed against the Award dated 16.12.95 in Reference (LCS) No.77/94. The workman is contesting for reinstatement instead of reemployment and he also contests for the continuity of service and backwages. The Corporation is contesting against the relief of reemployment granted to the workman although it is stated by Ms. Bhatt appearing for the Corporation that the workman has been given reemployment by the Corporation by an order dated 18.4.96 with effect from 10.4.96. A copy of this order dated 18.4.96 has also been produced.

2. Rule in each of the aforesaid two Special Civil Applications Nos.1478 of 1997 and 3028 of 1997. Ms. Bhatt waives service of the Rule on behalf of the Corporation in Special Civil Application No.1478 of 1997 and Mr. Rathod waives service of Rule on behalf of the concerned workman in Special Civil Application No.3028 of 1997.

3. Both these Special Civil Applications are directed against the same Award and, therefore, both these Special Civil Applications are decided by this common order and are taken up for final hearing right today on the request of the learned counsel for both the sides.

4. The workman had worked for a period of about 10 years in the Corporation as a driver. In the year 1986, he remained absent for the period on and from 8.10.86 to 19.11.86 i.e. for a period of nearly 1 month and 9 days and the case of the workman is that he remained absent on account of sickness. It was taken to be a case of unauthorised absence and on that basis the Corporation held inquiry against the workman. After inquiry, an order was passed on 13.3.87 dismissing the workman from service. Against this dismissal order dated 13.3.87 the workman raised a dispute and the matter was referred to the Labour Court, Surat. While the Reference was under adjudication before the Labour Court, Surat, the workman is said to have given a Purshis stating therein that he will be satisfied even if he is granted the relief of reinstatement with continuity of service and without backwages. The case of the workman was that even if the charge of absence is found to be proved, the punishment of dismissal imposed against him was highly excessive and disproportionate.

5. The Labour Court has also found that the punishment of dismissal for absence of 1 month and 9 days

was highly excessive and disproportionate. However, while granting the relief, the Labour Court directed the reemployment of the workman i.e. employment afresh, which resulted into the forfeiture of his 10 years service rendered prior to 1987. The backwages and continuity of service also have been denied. Mr. Rathod has submitted that if the matter was to be decided in terms of the purshis, there was no question of employment afresh and the relief of reinstatement with continuity of service ought to have been granted.

6. Ms. Bhatt appearing for the Corporation has argued that in the facts and circumstances of this case, there was no question of granting the relief of reinstatement, reemployment has already been given to the workman and hence there is no question of continuity of service.

7. I have heard learned counsel for both the sides. Once the Labour Court itself had found that the punishment of dismissal was highly excessive and disproportionate and it was also clearly held out in the Purshis submitted by the workman that he will be satisfied with the relief of reinstatement with continuity of service, there was no question of directing reemployment as a fresh appointee and to deny the continuity of service apart from the denial of backwages. I do not find any force in the argument of learned counsel for the Corporation that even if the finding that the punishment of dismissal was excessive, the Labour Court was justified in ordering re-employment. It goes without saying that once the relief of reinstatement is denied and the relief of reemployment is granted, it entails forfeiture of the entire past service, which again is a very serious punishment keeping in view the absence on the ground of sickness for a period of 1 month and 9 days against a workman, who had served the Corporation for a period of nearly 10 years. I, therefore, find that instead of reemployment, the Labour Court ought to have granted the relief of reinstatement with continuity of service and for the lapse on the part of the workman, the denial of backwages for the intervening period would meet the ends of justice. It is also clear from the Purshis that the workman had asked for reinstatement with continuity of service and the reemployment was never stipulated or held out and the workman himself had given the purshis that backwages may not be given to him. In view of this purshis, it is not open for the workman to take a somersault before this Court and also press for backwages. Accordingly, Mr. Rathod has stated before this Court that he does not

press for the relief of backwages.

8. Looking to the entirety of the matter, I find that the impugned Award deserves to be modified and the same is, therefore, modified in the terms that the workman has to be reinstated instead of reemployment and the continuity of service also has to be maintained, of course without any backwages whatsoever from the date of the dismissal till the date of the Award and on the date of reinstatement his pay to be fixed on notional basis, which he should have drawn on the date of reinstatement had he not been dismissed from the service, but the workman is not to be paid any financial benefit for any period from 13.3.87 to the date of reinstatement i.e. the date of the Award except the notional fixation of his pay in accordance with law.

9. In the result Special Civil Application No.1478 of 1997 filed by the workman is partly allowed as indicated above and the Rule is made absolute in the terms as aforesaid with no order as to costs and the Special Civil Application No.3028 of 1997 is dismissed and the Rule is discharged with no order as to costs.